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# Court Blocks Post Series

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The U.S. Court of Appeals early today barred the Washington Post temporarily from continuing its series based on a secret Pentagon study about the origins of the Vietnam war. It allowed the Post to finish its Saturday press run containing the second installment in the series.

The order issued at 1:20 a.m. by Judges Roger Robb and Spottswood W. Robinson III, with Judge J. Skelly Wright dissenting, reversed a decision last night by U.S. District Court Judge Gerhard A. Gesell, who had refused to grant the government a temporary restraining order against continuation of the series.

Gesell, calling the issue "a raw question of preserving the freedom of the press," refused to stay his order pending an appeal by the government, and by the time the argument before the appeals panel was over at 10:20 p.m., the Post presses were already running off today's first edition.

## Presses Halted

According to Executive Editor Benjamin C. Bradlee, the paper had already printed over 160,000 of its daily circulation of 530,000 when the appellate order came down.

The presses were halted for about a half-hour, until the appeals panel clarified its order through a courthouse aide, saying the Saturday installment could be run in full.

An attorney for the Post, Roger A. Clark, said today that the newspaper was preparing to litigate the matter fully before the District Court on Monday, and that an appeal to the Supreme Court was not contemplated at this time.

Meanwhile, a ruling on a preliminary injunction against the New York Times, also requested by the Justice Department, was expected today from U.S. District Court Judge Murray I. Wright in New York City. The Times began a series based on the same Pentagon study last Sunday.

The Post's case now will revert to Gesell on Monday for a hearing on a preliminary injunction against publication of the series.

## Deadline Set

The appeals court panel ordered that the Monday hearing be completed by 5 p.m., in time for yet another appeal or for The Post to meet its regular Monday evening deadline.

The study on which the Times and Post articles have been based was commissioned in 1957 by then-Secretary of Defense Robert S. McNamara. The completed study contains 47 volumes of analysis and appended documents, and has been classified as "secret" and "top secret" by the government.

It is not known how much of the study the Post has in its possession, nor from whom it received its copy.

The second installment of the Post series deals with United States bombing policy against North Vietnam from 1955 through 1963. The story quotes the study as saying that the Johnson administration allowed bombing pauses during this period in order to help placate public opinion, even though the administration had "almost no expectation" that the pauses would lead to peace talks.

The brief appeals court order said the judges' decision was based on the government's "substantial claim" that The Post had possession of the Pentagon study, "obtained without lawful authority and containing material which if published would prejudice the defense interests of the United States and result in irreparable injury to the United States."

More detailed opinions by the two-judge majority and by Judge Wright are expected to be filed today, a courthouse aide said.

## Gesell Picked

The Justice Department filed its suit at 5:15 p.m. yesterday, and it was assigned by the luck of the draw to Judge Gesell, who issued sweeping opinions against the government on occasions in

the past.

The government suit was virtually identical to that filed by Justice in New York on Tuesday, where Judge Gurfein temporarily enjoined the Times from continuation of its series.

Named as defendants in the Post suit were the Washington Post Co. and 14 individual officials and staff members of the paper, including Post staff reporter Chalmers Roberts, who wrote the first installment.

Among those named were Katherine Graham, owner of the company and publisher of the newspaper; Paul R. Ignatius, president of the newspaper; Benjamin C. Bradlee, executive editor; Philip L. Geylin, editorial page editor; Eugene C. Patterson, managing editor, and eight other officials.

As in the Times suit, the government charged that publication of reports from the Pentagon study in the Post "have prejudiced the defense interests of the United States," and that further publication "would further prejudice the defense interests of the United States and result in irreparable injury."

In addition an injunction against further publication of the series, the government asked that the Post be ordered to return all documents pertaining to the study, which the government charged the paper had received "unlawfully."

Neither Gesell nor the appeals panel dealt with this request yesterday. Gurfein refused a similar request by the government in the Times case, but the Times has since given the government the titles of the documents it possesses.

## Affidavits Submitted

Attached to the suit were identical affidavits by Thomas A. Constant, deputy director of the Defense Department's Vietnam Task Force, and Leonard Niederlechner, deputy general counsel for the Defense Department, saying they had reviewed the study and concluded that publication would prejudice the national security.

Deputy Asst. Atty. Gen. Kevin T. Maroney, arguing for the government, told Gesell that in possessing the documents, the Post was in violation of the federal Espionage Act, a part of the 1950 Internal Security Act.

He said the Justice Department had contacted the Post twice yesterday, once asking the paper to halt publication of its series, and once saying the report was too

to return "what is the property of the United States and is classified 'top secret.'"

The Post refused both requests, Maroney told Gesell. An article in the newspaper today said that Asst. Atty. Gen. William H. Rehnquist had telephoned Bradlee asking that the series be halted. Rehnquist "respectfully asked us to desist, and we respectfully declined," Bradlee is quoted as saying.

## Mitchell Request

Later, Atty. Gen. John N. Mitchell wired Mrs. Graham, informing her that the documents were top secret and "respectfully" asking that they be returned.

Maroney argued that "the situation here is not a question of normal prior restraint" of freedom of the press, but rather a question of whether a newspaper is entitled to publish information classified secret by the government.

Gesell said it appeared that the newspaper did not have an original copy of the study, but rather a photocopied facsimile, but Maroney replied that "it's the information that's classified, not the document as a piece of paper."

## Principle Cited

Clark, of the firm of Royall, Koegel & Wells, told Gesell that "this case presents a critical and important principle involving the relationship between a free press and the government."

For 200 years, he said, this relationship has worked to the benefit of the nation, and many important issues have been brought to light in "cases in which a free press has exercised a responsible judgement."

With the exception of Gurfein's order on Tuesday, Clark said to Gesell, "the government has never sought, and the court has never granted" prior restraint of publication by a newspaper.

To do so, he said, would be "a serious erosion of First Amendment rights in this area."

Gesell at first seemed reluctant to deny the government's request, pointing out that to do so would effectively moot the issue as far as Gurfein was concerned. And if he were to deny the order and Gurfein were to issue an injunction against the Times, the latter might be put at an unfair competitive advantage, he said.

Clark replied that no matter what Gurfein rules, "there's a leak in the dike," and information on the study would be forthcoming.